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AUG - 5 1998

Paper No. 7

In re Application of
Michael Burton
Application No. 08/657,725
Filed: May 3, 1996
For: TOY CLAPPER

:
: DECISION ON PETITION
: REGARDING ABANDONMENT
:

Applicant's petition, filed on July 13, 1998, requests withdrawal of the examiner's holding that this application stands abandoned for failure to timely file a reply to the Office letter dated August 20, 1997.

The petition is GRANTED.

As set forth in the petition, and confirmed by an examination of the record, applicant did file a reply to the Office letter in question. However, the reply was received in the Office on November 24, 1997, outside of the three month shortened statutory period set in the Office letter dated August 20, 1997 in which to file a reply. The reply did not have an executed certificate of mailing under 37 CFR § 1.8. Although the practice would have been to advise applicant of deficiency in applicant's reply, it does not appear that applicant was so advised.

It is also noted 37 CFR 1.136(a) was amended, effective December 1, 1997, to read in pertinent part as follows:

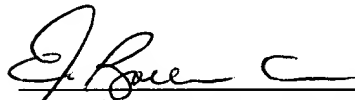
"An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission."

The record shows that when filed, this application included authorization to charge Deposit Account No. 18-0013 application processing fees under 37 CFR § 1.17. Moreover, it is the policy of the Office to construe the December 1997 rule changes both liberally, and where possible, prospectively. Therefore, although the amendment filed on November 24, 1997 was untimely, and a petition for an extension of time was required to make the reply timely, on December 1, 1997, it was entirely proper to construe the authorization to charge 37 CFR § 1.17 fees contained in this application as a constructive petition for the necessary one month extension of time, and to charge the

necessary fee.

Therefore, this application is being forwarded to the Head Supervisory Applications Examiner in Patent Examining Group 3710 with instructions to charge Deposit Account No. 18-0013 the \$110.00 fee under 37 CFR § 1.17 for a one month extension of time. Thereafter, the Notice of Abandonment will be considered to be vacated, the holding of abandonment will be considered to be withdrawn, and the application will be restored to pending status. The application will then be forwarded to the examiner for action on the reply filed on November 24, 1997.

PETITION GRANTED.



E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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